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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

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Implementation of Section 302 of
the Telecommunications Act of 1996

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Open Video Systems

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CS Docket No. 96-46

To: The Commission

Comments of UTC

Pursuant to Section 1.415 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC),¹ hereby submits its comments in response to the *Notice of Proposed Rule Making (NPRM)* in the above-captioned proceeding.

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines. Over 1,000 such entities are members of UTC, ranging in size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives serve only a few

¹ UTC was formerly known as the Utilities Telecommunications Council

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thousand customers each. All utilities depend upon reliable and secure communications to assist them in carrying out their public service obligations, and as a result many operate extensive internal communications systems consisting of fiber optic networks and other broad band media that could be utilized in whole or in part in fostering competition in the delivery of video services. As the organization that took a lead role in ensuring that the Telecommunications Act of 1996 allowed for and promoted utility entrance into telecommunications, UTC is pleased to offer the following comments.

I. All Entities, Including Utilities Should Be Eligible To Become Open Video System Operators

The Commission notes that in establishing Open Video Systems subsection 653(a)(1) of the Act states that a local exchange carrier “may provide cable service” through an open video system, while cable operators and others “may provide video programming” through an open video system. The FCC inquires as to whether this language should be interpreted as restricting non-local exchange carriers to the provision of video programming over another party’s open video system.

UTC does not believe that this provision was intended to act as a bar on the operation of open video systems by non-local exchange carriers, such as utilities; rather the distinction in the statutory language simply addresses the fact that historically the Act has prohibited the provision of cable service by local exchange carriers. It would strain reason to suggest that the Act, which is premised on the elimination of antiquated regulatory

distinctions and the introduction of competition, would erect an arbitrary barrier as to who could offer a particular type of video delivery service.

A broad interpretation of the Act that allows all entities to operate open video systems would clearly better serve the Act's public interest mandates. Such an interpretation would promote competitive parity by allowing all entities access to the full range of video delivery options that are available to local exchange carriers, and by providing a wider range of outlets for unaffiliated video programming providers. Allowing all entities to operate open video systems will also foster the provision of facilities based competition in the delivery of video services, which is in keeping with the Act's goal of "accelerate[ing] rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."²

A broad interpretation of eligibility for open video systems would also be consistent with the Act's emphasis on encouraging participation by new entrants. The open video system framework is particularly suited to utilities that have greater expertise in the deployment and management of the physical infrastructure rather than program content.

In addition, as new entrants that are looking to offer bundled packages of video, telephony and information services, the open video systems platform option will give utilities broad

² Telecommunications Act of 1996 Conference Report, S. Rep. 104-230 at 113, February 1, 1996 (emphasis added).

flexibility in determining the most appropriate manner to enter the marketplace and best serve the interests of consumers.

II. Allocation of Capacity on Open Video Systems

While the open video system framework prohibits the system operators from discriminating among video program providers with regard to carriage, this prohibition should not be construed to preclude the open video system operator's participation in the allocation of channel capacity. Open video system operators should be permitted to administer the allocation of channel capacity on their systems provided that they do not discriminate among competing video program providers.

The Commission seeks comment on what regulations it should adopt to ensure that the open video system operator allocates capacity on a non-discriminatory basis. UTC suggests that the most appropriate approach is a straight forward prohibition on discrimination by an open video system operator against unaffiliated programmers in the allocation of channel capacity. The open video system operator would then be free to design a channel allocation policy of its own choosing, provided that it does not discriminate. The Commission should address complaints of discrimination on a case-by-case basis.

Under the Act's open video system provisions, if demand exceeds the channel capacity of the open video system the operator and its affiliates are prohibited from selecting the video programming services for carriage on more than one-third of the

activated channel capacity. In measuring the amount of capacity on an open video system the Commission should look to the total activated system bandwidth that has been allocated for the transmission of video programming. Accordingly, the measurement of open video system capacity should not include bandwidth that is being held in reserve or has been specifically allocated for another, non-video related purpose. For example, a utility's reservation and use of fiber capacity for internal control and protection of the electric system should not be counted as part of available open video system capacity.

The Commission seeks comment on whether an open video system operator should be permitted to prescribe either minimum or maximum amounts of capacity that an unaffiliated programming provider may obtain. So long as capacity is provided on a non-discriminatory basis, UTC believes that a system operator should be free to prescribe minimum or maximum amounts of capacity that will be made available to an unaffiliated program provider. There is nothing in the statute or the legislative history to suggest that Congress intended to restrict a system operator's control over channel capacity in this regard. In a related matter, the Commission should clarify that an open video system operator may lease all of its available capacity to a single non-affiliated program provider, provided that it is offered on a non-discriminatory basis and complies with the applicable notice provisions.

III. Conclusion

The Commission should adopt a broad interpretation of eligibility for open video system operators so as to allow all entities, including utilities, access to the full range of video delivery options that are available to local exchange carriers. Allowing all entities to operate open video systems will also foster the provision of facilities based competition in the delivery of video services and ultimately will provide greater choice for the consumer.

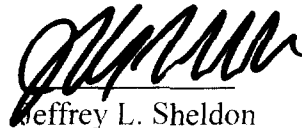
So long as it is provided on a non-discriminatory basis, a system operator should be free to prescribe minimum or maximum amounts of capacity to an unaffiliated program provider.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

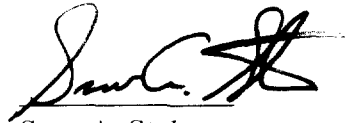
Respectfully submitted,

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